

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV 25 1996

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Jupiter and Hobe Sound,)
Florida))

MM Docket No. 96-205
RM-8862

To: Chief; Allocations Branch
Policy and Rules Division
Mass Media Bureau

DOCKET FILE COPY ORIGINAL

COMMENTS

1. Jupiter Radio Partners ("Petitioner"), permittee of Station WTPX(FM), Jupiter, Florida, by its counsel, hereby submits the following comments in response to the Commission's Notice of Proposed Rule Making, 11 FCC Rcd 12707 (1996) ("NPRM") in the above captioned proceeding. Petitioner reaffirms its interest in the proposal to substitute Channel 288C2 for Channel 288C3 at Jupiter, Florida and to reallocate Channel 288C2 from Jupiter, Florida to Hobe

No. of Copies rec'd
List ABCDE

024

Sound, Florida.¹ If the Commission grants this proposal, Petitioner will file an application for a minor change to specify Hobe Sound, Florida, and upon grant will commence construction and operation of the facilities.

2. In its NPRM, the Commission requested that Petitioner provide supplemental information with a Tuck analysis showing that Hobe Sound is independent from the Stuart Urbanized Area. The purpose of these comments is for Petitioner to provide that analysis and demonstrate that Hobe Sound is sufficiently independent from the Stuart Urbanized Area and deserves a first local service preference.

3. In Tuck, the Commission established three general criteria to examine in determining whether a community is so integrally related to the urbanized area that it should be denied a local service preference. Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988). The three criteria enumerated in Tuck are the following: (1) the signal population coverage; (2) the size and proximity of the suburban community relative to the adjacent city and whether the suburban community is located within the Urbanized Area of the city; and (3) eight factors assessing the interdependence of the suburban community with the central city.²

¹ On November 8, 1996, Petitioner filed an application to modify its construction permit pursuant to a "one-step" upgrade from Channel 288C3 to Channel 288C2 at Jupiter, Florida. However, should the Commission grant this petition, the application will be dismissed.

² Those eight factors are: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has

Parker and Port St. Joe, Florida, 11 FCC Rcd 1095 (1996).

4. Based on the three criteria, Petitioner will demonstrate that Hobe Sound is an independent community worthy of a first local service preference. Hobe Sound, population 11,507, is located within the Stuart Urbanized Area, population 80,069. From the proposed reference point, the 70 dBu signal will cover the entire Stuart Urbanized Area, as the Commission has noted in the NPRM. Petitioner maintains that its primary intention is to serve the Hobe Sound Community, which represents 14% of the Stuart Urbanized Area. Petitioner selected this reference point due to the requirement that a non short-spaced site be proposed. See Sec 73.207 of the Commission's Rules. This reference point selection should not be inferred to represent the petitioner's desire to reach the entire Stuart Urbanized Area. In fact, at this time, petitioner intends to utilize the site specified in its pending Class C2 application which will not cover the St. Lucie County portion of this Urbanized Area.

its own newspaper or other media that covers the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire prevention, schools, and libraries.

5. Hobe Sound is not situated contiguous to the central city of Stuart, but instead lies adjacent to several unpopulated areas between the two communities with Port Salerno also located between Stuart and Hobe Sound. (See Exhibit 1). Further, Hobe Sound's population is almost equivalent to that of Stuart (11,936), supporting Petitioner's assertion that Hobe Sound is its own independent community.

6. Moreover, Hobe Sound satisfies a majority of the enumerated eight factors to warrant treating it as a separate community. The Commission has stated that evidence supporting a majority of the eight factors is sufficient to treat the community as independent. Parker and Port St. Joe, Florida, 11 FCC Rcd 1095 (1996).

7. According to a 1994 demographic profile, Hobe Sound has a population of 12,700. (See Exhibit 2, p. 7). Within its growing community, Hobe Sound provides many municipal services and facilities to serve the needs of its residents. Hobe Sound has its own Chamber of Commerce, U.S. postal facility, and two zip codes (33455 and 33475) (factor 5). The community also provides the Hobe Sound Fire Department, Hobe Sound First Aid Squad, Hobe Sound Annex Tax Collector, Hobe Sound Annex Supervisor of Elections, and Hobe Sound Property Appraiser (factor 8). (See Exhibit 2, pp. 8 & 48). Hobe Sound also has its own library entitled the Hobe Sound Branch Library (factor 8). In fact, the library is considering expanding to accommodate the community's growing population. (See Exhibit 2, p. 10). Further, Hobe Sound is home to several

educational institutions, including Hobe Sound Elementary School, Hobe Sound Christian Academy, and Hobe Sound Bible College (factor 8). (See Exhibit 2, pp. 11-12). However, although the community is served by several area newspapers, it does not publish its own local newspaper (factor 2).

8. Additionally, Hobe Sound has many civic organizations and commercial establishments serving its residents (factor 6). Civic organizations in Hobe Sound include the Community Coalition of Hobe Sound, the GFWC Hobe Sound Women's Club, Inc., the Hobe Sound Junior Women's Club, the Rotary Club of Hobe Sound-Port Salerno, and Friends of the Hobe Sound Library (factor 6). (See Exhibit 2, pp. 14-15). Many of the organizations hold their meetings at the Hobe Sound Civic Center. (See Exhibit 2, pp. 14-15). Hobe Sound also has many community churches, including the Hobe Sound Community Presbyterian Church. It also is home to the Hobe Sound Beach Park, the Hobe Sound Fine Art League, the Hobe Sound Nature Center, and the Martin Memorial Family Care Center at Hobe Sound.

9. Further, Hobe Sound has over 150 businesses, restaurants, banks, shopping centers, and professional organizations within the community (factor 6). (See Exhibit 2, pp. 18-27). In fact, many bear the community name, including the Hobe Sound Child Care Center, The Manors at Hobe Sound, Hobe Sound Florist, Hobe Sound Jewelers, Hobe Sound Cinemas, Hobe Sound Prescriptions, Hobe Sound Golf Club, Heritage Ridge Golf Club of Hobe Sound, Hobe Sound Veterinary Clinic, and several others. (See Exhibit 1, p. 30). Although Petitioner was unable to obtain any evidence demonstrating

the number of Hobe Sound residents working in the community, it can reasonably be assumed that many residents work in Hobe Sound due to the large number of businesses located in the community (factor 1).

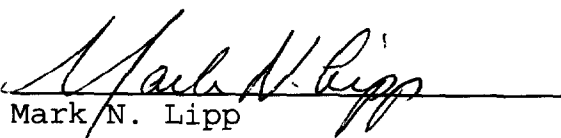
10. Clearly, Hobe Sound has sufficient municipal services, businesses, and social organizations to exist independent of the Stuart Urbanized Area and warrants a first local service preference. Accordingly, petitioner urges the Commission to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules as follows:

<u>Community</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Jupiter, Florida	258A, 288C3	258A
Hobe Sound, Florida	-----	288C2

Respectfully submitted,

JUPITER RADIO PARTNERS

By:


Mark N. Lipp

MULLIN, RHYNE, EMMONS AND TOPEL, P.C.
1225 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036-2604
(202) 650-4700

Its Counsel

November 25, 1996

EXHIBIT 1

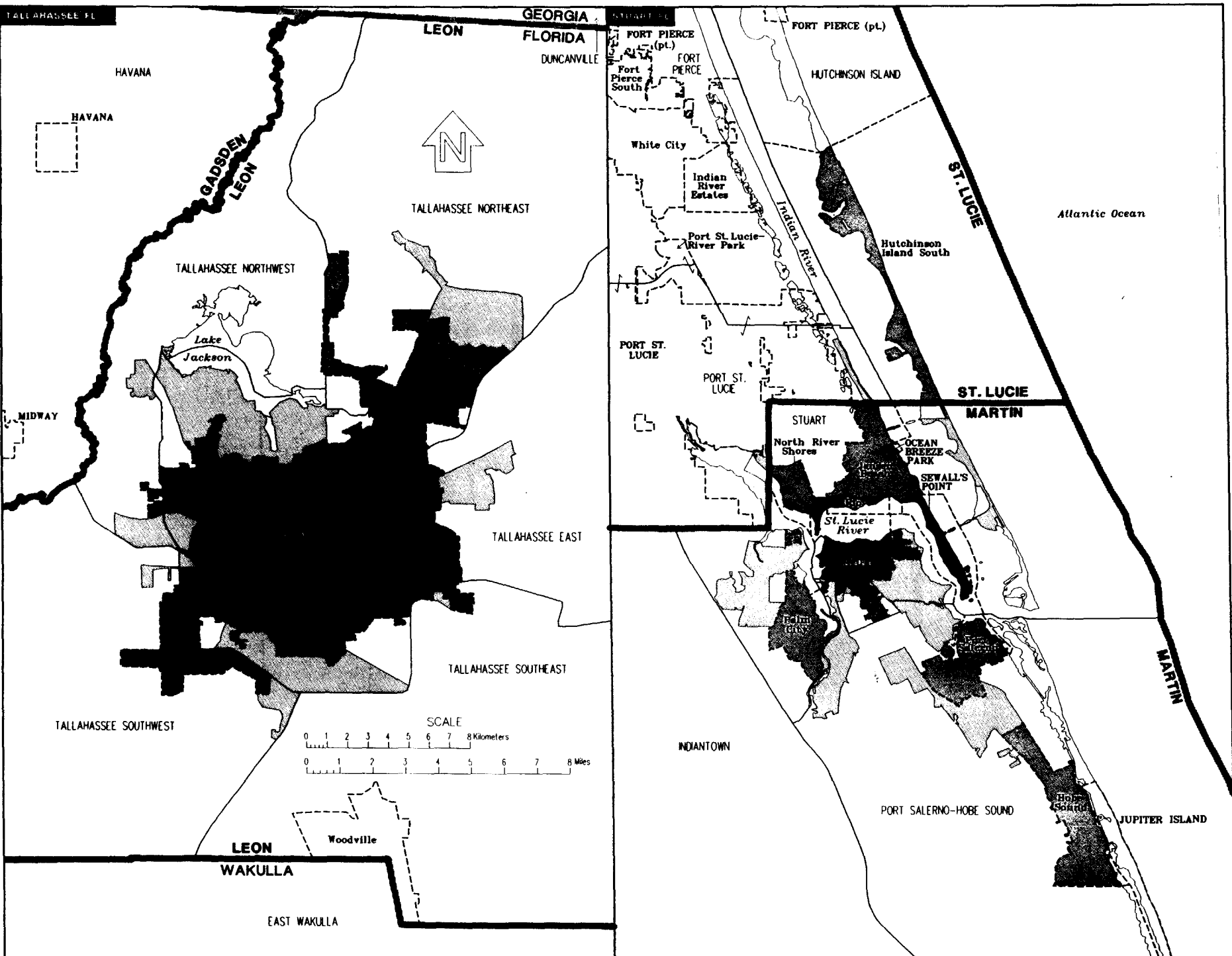


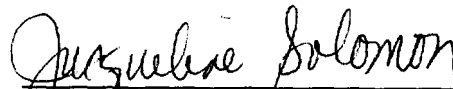
EXHIBIT 2

CERTIFICATE OF SERVICE

I, Jacqueline Solomon, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that I have, on this 25th day of November, 1996, sent by hand delivery a copy of the foregoing "COMMENTS" to the following:

* Ms. Kathleen Scheuerle
Chief, Allocations Branch
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.--8314
Washington, D.C. 20554

* Hand Delivered


Jacqueline Solomon

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

- o Microfilm, microform, certain photographs or videotape.

- o Other materials which, for one reason or another, could not be scanned into the RIPS system.

Pamphlets

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

*Hobe Sound
Chamber of Commerce
Community Guide*